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01-CV-00640-ORD

THE HONORABLE ROBERT S. LASNIK

FILED ENTERED

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JAN 16 2004

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

ARGENT CLASSIC CONVERTIBLE
ARBITRAGE FUND, L.P., on behalf of itself
and all others similarly situated,

Plaintiffs,

CO1-0640L

**STIPULATION AND PROTECTIVE
ORDER**

v.
AMAZON.COM INC., JEFFREY P. BEZOS,
JILL COVEY, TOM A. ALBERG, SCOTT D.
COOK, L. JOHN DOERR, AND PATRICIA Q.
STONESIFER,

Defendants.

The parties, by and through their respective counsel of record, hereby stipulate and agree to the following proposed Protective Order:

1. This Order shall govern the designation and handling of non-public, confidential, proprietary, sensitive business, personal or financial information (collectively referred to herein as "Confidential Material," "Confidential Information" or "Confidential Documents"), as defined in paragraph 3 below, exchanged by the parties during informal and formal discovery or otherwise during the course of this litigation. This Order shall apply to and govern all depositions, documents produced in response to requests for production of documents, answers to interrogatories, responses to requests for admissions, and all other

1 discovery taken pursuant to the Federal Rules of Civil Procedure and/or the Local Rules of
2 this Court, as well as to pleadings and other documents filed during the pendency of this
3 action (including any appeals), testimony adduced at trial, matters in evidence, and other
4 information produced or provided in connection with this action.

5 2. All documents and information designated as (1) "Confidential" or (2) "Highly
6 Confidential - Attorneys' Eyes Only" pursuant to this Protective Order shall be used for
7 purposes of this litigation only, and shall not be used for business, competitive or other
8 purposes, or shared with any party or attorney in any other action, related or otherwise.

9 3. Any person (including persons and entities not named as parties in this action)
10 who is required to produce documents or information in discovery in this litigation may
11 designate material produced as "Confidential" or "Highly Confidential - Attorneys' Eyes
12 Only" pursuant to this Protective Order. All "Confidential" or "Highly Confidential -
13 Attorneys' Eyes Only" designations must be based on the good-faith belief that the
14 information so designated is entitled to protection under Fed. R. Civ. P. 26(c) as
15 (i) proprietary or sensitive business, personal or financial information, or (ii) information
16 subject to a legally protected right of privacy. Material designated as "Confidential" or
17 "Highly Confidential - Attorneys' Eyes Only" must fall within one of the following
18 categories:

19 (a) Documents or materials containing sensitive, non-public information
20 relating to business relationships, discussions, decisions, assessments, strategies, operations,
21 negotiations, investments, contracts or agreements with past, present, or potential business
22 partners;

23 (b) Documents or materials containing private, non-public information
24 relating to an individual's or entity's compensation, assets, liabilities, valuation, net worth, or
25 financial condition or performance;

26 (c) Documents or materials, including internal company e-mail, containing
27 sensitive, non-public information relating to company personnel matters, including hiring,
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1 termination, and performance evaluations of past or present employees, consultants, or co-
2 venturers;

3 (d) Documents or materials containing sensitive, non-public information
4 relating to proprietary technology, intellectual property, trade secrets, or customer lists, or

5 (e) Documents or materials which otherwise contain private, non-public
6 information subject to a legally protected right of privacy.

7 4. Documents or materials shall be designated as "Confidential" by affixing to
8 them the following legend in a size and location that makes the designation readily apparent:

9 **"CONFIDENTIAL"**

10 **or**

11 **"CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER."**

12 Documents or materials shall be designated as "Highly Confidential - Attorneys' Eyes Only"
13 by affixing to them the following legend in a size and location that makes the designation
14 readily apparent:

15 **"HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."**

16 5. Any document or materials mistakenly produced or disclosed without any
17 confidentiality designation after the entry of this Order may be subsequently designated by the
18 producing person as "Confidential" or "Highly Confidential - Attorneys' Eyes Only." In
19 each such case, the designating person shall provide to all other parties written notice of that
20 designation and a copy of the information marked in accordance with paragraph 4. No person
21 shall be liable for publicly disclosing a document marked "Confidential" or "Highly
22 Confidential - Attorneys' Eyes Only" pursuant to this paragraph if that disclosure occurred
23 prior to receipt of said written notice.

24 6. If a party or non-party inadvertently produces a document or other material
25 that it later discovers or in good faith asserts to be privileged, the production of that
26 information shall not be deemed to constitute the waiver of any applicable privilege. In such
27 circumstances, the producing party must immediately notify the receiving party of the
28 inadvertent production and request the return of the privileged material. Within five days of
receiving such notification, the receiving party shall return all such materials, including any

1 summaries, excerpts or copies thereof. Such return shall not preclude the receiving party
 2 from seeking to compel production of the materials for reasons other than the inadvertent
 3 production and shall not constitute an admission by the receiving party that the materials were
 4 in fact privileged.

5 7. Any party wishing to designate as "Confidential" or "Highly Confidential --
 6 Attorneys' Eyes Only" deposition testimony or documents submitted as exhibits to a
 7 deposition may do so either (a) on the record during the deposition, or (b) within 45 days after
 8 receipt of the deposition transcript and exhibits, by providing written notice to all other parties
 9 and any affected non-parties by reference to the subject matter of the testimony and specific
 10 exhibits designated as "Confidential" or "Highly Confidential -- Attorneys' Eyes Only." To
 11 the extent reasonably practicable, the parties should avoid designating entire transcripts as
 12 "Confidential" or "Highly Confidential -- Attorneys' Eyes Only" where only a portion thereof
 13 or the exhibits used therewith qualify for protection under this Order.

14 8. With respect to information or materials designated as "Confidential" or
 15 "Highly Confidential -- Attorneys' Eyes Only" to be used at trial, the parties shall meet and
 16 confer after the Pretrial Conference (a) to reach an agreement as to the confidentiality of
 17 information to be used at trial, and (b) to discuss the use of "Confidential" or "Highly
 18 Confidential -- Attorneys' Eyes Only" documents as trial exhibits. If necessary, the parties
 19 shall also develop a method for maintaining the confidentiality of such information and
 20 documents at trial.

21 9. With the exception of those documents whose confidentiality designations
 22 have been successfully challenged pursuant to paragraph 13 below, the parties stipulate to the
 23 filing of Confidential Material under seal. The parties understand the Court's entry of this
 24 Order to satisfy the procedural requirements of Western District of Washington Local Rule
 25 5(g) concerning the sealing of Court records. Following entry of this Order, Confidential
 26 Material filed with the Court for any purpose shall be filed in a separate, sealed envelope or
 27 other container, marked on the outside with the caption of this action and a statement
 28 substantially similar to the following:

***"CONFIDENTIAL - FILED UNDER SEAL PURSUANT TO
PROTECTIVE ORDER"***

If any person fails to file Confidential Documents or Confidential Information under seal, the producing party or any party or nonparty claiming confidentiality for the documents or information may request that the Court place the filing under seal.

10. Information designated as "Confidential" may be delivered, exhibited or disclosed to the following persons, subject to the requirements of paragraph 12:

- (a) The attorneys-of-record for a party, including paralegal assistants, and stenographic and clerical employees working under the direct supervision of such attorneys;
- (b) The parties to the action and current employees of the parties who have a need to know the information to assist counsel in the prosecution or defense of this litigation, including in-house counsel, paralegal assistants and clerical employees;
- (c) Any person not employed by a party who is expressly retained or sought to be retained by any attorney described in paragraph 10(a) as a consultant or expert to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work. For purposes of this paragraph, a consultant or expert shall be defined as a person who is neither an employee of a party nor anticipated to become an employee in the near future, and who is retained or employed as a *bona fide* consultant or expert for purposes of this litigation, by or at the direction of counsel for a party;
- (d) Any person not covered under paragraph 10(c), where there is a reasonable basis for believing that the person sent, received or was involved in the preparation of the Confidential material, except that such person may only be shown copies of material designated "Confidential" for the purpose of preparing declaration testimony, may not retain any such material, and may not disclose the contents of that material;
- (e) Any person from whom testimony is taken whose testimony involves or relates to such information, except that such person may only be shown copies of material designated Confidential during his testimony, if there is a reasonable basis to believe that the person sent, received or was involved in the preparation of the Confidential Information. Any

person shown such information may not retain any such material, and may not disclose the contents of that material;

- (f) Any other person with the prior written consent of the designating party; and
- (g) The Court.

11. Information designated as "Highly Confidential – Attorneys' Eyes Only" may be delivered, exhibited or disclosed to the following persons, subject to the requirements of paragraph 12:

- (a) The attorneys-of-record for a party and in-house attorneys, and all paralegal assistants, and stenographic and clerical employees working under the direct supervision of such counsel;
- (b) Any person not employed by a party who is expressly retained or sought to be retained by any attorney described in paragraph 10(a) as a consultant or expert to assist in preparation of this action for trial, with disclosure only to the extent necessary to perform such work. For purposes of this paragraph, a consultant or expert shall be defined as a person who is neither an employee of a party nor anticipated to become an employee in the near future, and who is retained or employed as a *bona fide* consultant or expert for purposes of this litigation, by or at the direction of counsel for a party;
- (c) Any person not covered under paragraph 11(b), where there is a reasonable basis for believing that the person sent, received or was involved in the preparation of the Highly Confidential – Attorneys’ Eyes Only material, except that such person may only be shown copies of material designated Highly Confidential – Attorneys’ Eyes Only for the purpose of preparing declaration testimony, may not retain any such material, and may not disclose the contents of that material;
- (d) Any person from whom testimony is taken whose testimony involves or relates to such information, except that such person may only be shown copies of material designated “Highly Confidential – Attorneys’ Eyes Only” during his testimony, if there is a reasonable basis to believe that the person sent, received or was involved in the preparation of the Confidential Information. Any person shown such information may not retain any such material, and may not disclose the contents of that material;

(e) Any other person with the prior written consent of the designating party; and

(f) The Court.

12. Confidential Material shall not be made available to any person identified in paragraph 10(c) or paragraph 11(b) unless, prior to disclosure, the person reviews and acknowledges that they understand the Protective Order and are bound by its terms, and completes and signs the Undertaking attached as Exhibit A hereto. Every individual who receives any information designated as "Confidential" or "Confidential Highly Confidential – Attorneys' Eyes Only" shall be deemed to have submitted to the jurisdiction of this Court in any proceedings relating to performance under, compliance with, or violation of this Protective Order.

13. Any party may object to the designation of any document or information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only." If a party does so, it must do so in writing to opposing counsel and to any affected nonparty, and request a meeting to attempt to resolve the dispute. If the dispute is not resolved through this meet-and-confer process, then any party or an affected nonparty may move the Court for appropriate relief. Any disputed documents or information shall be treated as "Confidential" or "Highly Confidential -- Attorneys' Eyes Only," as appropriate, under this Protective Order until the Court rules otherwise.

14. The procedures set forth herein shall not relieve a party of its rights or obligations under the Federal Rules of Civil Procedure regarding the production of documents or making timely responses and/or objections to discovery requests. Nothing herein shall affect the producing party's obligation to show good cause for the protection of the information upon motion pursuant to paragraph 13.

15. The receipt by any party or nonparty of Confidential Information shall obligate such recipient to maintain the Confidential Information in secure facilities with access restricted only to those persons authorized to receive Confidential Information under this Order.

1 16. The provisions of this Protective Order shall, absent written permission of the
2 producing party or further order of the Court, continue to be binding throughout this action,
3 including any appeals, and shall continue in effect after the conclusion of this action. Within
4 60 days of the conclusion of this action, including any appeals and/or any writs for further
5 review, and after the termination of litigation has become final, any party or nonparty which
6 has received Confidential Material in this action shall return or certify the destruction of all
7 such Confidential Material to the producing party or nonparty, except those filed with the
8 Court.

9 17. Nothing in this Protective Order shall limit any producing party's use of its
10 own documents or shall prevent any producing party from disclosing its own Confidential
11 Information to any person. Such disclosures shall not affect any "Confidential" or "Highly
12 Confidential - Attorneys' Eyes Only" designation made pursuant to the terms of this
13 Protective Order so long as such disclosure is made in a manner that is reasonably calculated
14 to maintain the confidentiality of the information.

15 18. Nothing in this Protective Order shall: (a) operate as an admission by any
16 party that any particular information or material contains or reflects trade secrets, proprietary,
17 commercially sensitive or other confidential information; (b) prejudice in any way the rights
18 of a party to object to the authenticity or admissibility into evidence of any document,
19 testimony or other evidence; or (c) prevent the parties and any non-parties from agreeing in
20 writing or on the record during a deposition or hearing to alter or waive the provisions of this
21 Order with respect to any particular information or material.

22 19. The parties stipulate to this Protective Order pending its entry by the Court, or
23 pending the entry of an alternative order which is satisfactory to all parties, and any violation
24 of this Protective Order's terms during such pendency shall be subject to the same sanctions
25 and penalties as if this Protective Order had been entered by the Court. The parties stipulate
26 to this Protective Order without prejudice to the right to seek modification to the Order if
27 circumstances so warrant.

1 20. The Court retains jurisdiction to make any amendments, modifications or
2 additions to this Protective Order, as it deems appropriate.

3 **STIPULATED and AGREED:**

5 Dated: January 8, 2004

Dated: January , 2004

6 GIBSON, DUNN & CRUTCHER LLP

7 KIRBY McINERNEY & SQUIRE, LLP

8 By Paul J. Collins
9 Paul J. Collins

By Richard L. Stone
Richard L. Stone

10 Attorneys for Defendants

11 Attorneys for Plaintiffs

12 **ORDER**

13 BASED ON THE FOREGOING STIPULATION, it is hereby
14 ORDERED that the foregoing Protective Order be and hereby is ENTERED.

15 DATED this 16th day of January, 2004.

16 Robert S. Lasnik
17 JUDGE ROBERT S. LASNIK

1 PRESENTED BY

2 PERKINS COIE LLP

3
4 By Douglas W. Greene
5 Douglas W. Greene, WSBA No. 22844

6 Attorneys for Defendants

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8
9 McKAY CHADWELL, PLLC

10 By Michael D. McKay
11 Michael D. McKay, WSBA No. 7040

12
13 Attorneys for Plaintiffs

1 EXHIBIT A
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THE HONORABLE ROBERT S. LASNIK

8 UNITED STATES DISTRICT COURT
9
10 WESTERN DISTRICT OF WASHINGTON
11
12 AT SEATTLE

13 ARGENT CLASSIC CONVERTIBLE
14 ARBITRAGE FUND, L.P., on behalf of itself
15 and all others similarly situated,

CO1-0640L

UNDERTAKING

16 Plaintiffs,

17 v.

18 AMAZON.COM, INC., JEFFREY P. BEZOS,
19 JILL COVEY, TOM A. ALBERG, SCOTT D.
COOK, L. JOHN DOERR, AND PATRICIA Q.
STONESIFER,

Defendants.

20
21 I, _____, state that:

22 1. My address is _____.

23 2. My present employer is _____.

24 3. My present occupation or job description is _____.

25 4. I have received a copy of the Protective Order in this case and have carefully
26 read and understand its provisions. I will comply with all of its provisions, including holding
27 in confidence and not disclosing to anyone not qualified under the Protective Order any
28 information designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only." or

1 any words, substances, summaries, excerpts, abstracts or indices of designated information,
2 and copies thereof, which come into my possession, and documents or things which I have
3 prepared relating thereto, except to counsel for the party by whom I am retained.

4 5. I hereby consent to personal jurisdiction of this Court in respect to any
5 proceeding relating to the enforcement of the Protective Order, including any proceedings
6 relating to contempt of Court.

7 6. I declare under penalty of perjury under the laws of the State of Washington
8 and the United States of America that the foregoing is true and correct.

9 Dated: _____

10 Place Signed: _____
11

12 Signed: _____
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14 Printed Name: _____
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